



## State of New Jersey

### DEPARTMENT OF HEALTH AND SENIOR SERVICES

PO BOX 360  
TRENTON, N.J. 08625-0360

JAMES E. MCGREEVEY  
*Governor*

[www.state.nj.us/health](http://www.state.nj.us/health)

CLIFTON R. LACY, M.D.  
*Commissioner*

July 2, 2004

TO: Hospital Chief Executive Officers

FROM: Marilyn Dahl, Deputy Commissioner,  
Health Care Quality and Oversight

RE: Compliance with the Domestic Partnership Act  
P.L. 2003, c. 246 (corrected)

P.L. 2003, c. 246, codified in pertinent part at N.J.S.A. 26:8A-1 through 12, and elsewhere in Title 26 of the New Jersey Statutes,<sup>1</sup> herein referred to as the Act, will become effective July 10, 2004. Essentially, the Act requires that all persons in domestic partnerships should be entitled to certain rights and benefits that are accorded to married couples under the laws of New Jersey, including visitation rights for a hospitalized domestic partner and the right to make medical or legal decisions for an incapacitated partner.<sup>2</sup> This bulletin is intended to provide guidance for hospital staff seeking to comply with the Act.

### INTRODUCTION

The specific provisions pertaining to the Act's application within the hospital setting can be somewhat complex. In the discussion that follows, we have highlighted certain areas of the Act's application. We have also attached, for your reference, pertinent excerpts from the Act, *i.e.*, the statutory definition of "domestic partnership," and certain forms which will be issued by local registrars in order to indicate official recognition of domestic partnerships pursuant to the Act, *i.e.*, the Affidavit of Domestic Partnership and the Certificate of Domestic Partnership.

### EMERGENCY MEDICAL SITUATIONS

The Act contains a special provision pertaining to, "emergency medical situation(s)." Specifically, it requires that in such situations, a hospital must treat an individual claiming to be a domestic partner of the affected patient as an immediate family member, (1) for purposes of accompanying the patient while being transported to

<sup>1</sup> Specifically, N.J.S.A. 26:2H-12.22, 26:8-4, 26:8-17, 26:8-23 through 25; 26:8-48, 26:8-51, 26:8-55, 26:8-60, 26:8-62 through 64, 26:2H-32, 26:2H-57 through 58, 26:5C-12, 26:6-50, 26:6-57 through 58.1, and 26:6-63.

<sup>2</sup> N.J.S.A. 26:8A-2(d).

the hospital and, (2) for purposes of visiting the partner who is a hospital patient. This requirement applies even if the individual and the affected patient have not filed an Affidavit of Domestic Partnership, so long as one or both of the partners have “advise(d) the emergency care provider that the two persons have met the other requirements for establishing a domestic partnership as set forth in section 4 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-4).”

With regard to the term, “emergency medical situation,” it would be advisable to consult with your counsel in order to arrive at an interpretation which is consistent with the requirements of EMTALA as well as of N.J.A.C. 8:43G-12.7.

### PROOF OF DOMESTIC PARTNERSHIP IN A NON-EMERGENCY SITUATION

The Act explicitly states that, “[a]ny health care or social services provider...or other individual or entity **may** treat a person as a member of a domestic partnership, notwithstanding the absence of an Affidavit of Domestic Partnership filed pursuant to this Act.” P.L. 2003, c.246 (N.J.S.A. 26:8A-6(d)) (emphasis added). Thus, although in an “emergency medical situation” the hospital **must** accept an individual’s representation that he/she and his/her partner satisfy the requirements of domestic partnership set forth in the Act, in a non-emergency situation, the hospital **may** accept such a representation. Conversely, in the non-emergency medical situation the hospital may refuse to accept such a representation, instead requiring the production of an Affidavit of Domestic Partnership or a Certificate of Domestic Partnership, or both. We advise that you seek input from your counsel to develop a policy consistent with existing hospital policy related to immediate family members.

### RIGHTS AFFORDED BY THE ACT

The Act explicitly affords domestic partners the following rights within the hospital setting:

- (1) Visitation rights,
- (2) Right to be designated as health care representative in a proxy directive,
- (3) Right to consent to disclose records of deceased,
- (4) Right to consent to a post-mortem and necroscopic examination,
- (5) Right to consent to a gift of all or part of a body,
- (6) Right to consent to an organ donation.

### MEDICAL OR LEGAL DECISIONS

Hospitals have sought clarification as to whether the Act affords domestic partners the right to make medical or legal decisions for an incapacitated partner in the absence of a proxy directive naming the domestic partner. Although the Act does not explicitly grant such a right, note that the legislative findings section of the Act, states, in pertinent part that, “[a]ll persons in domestic partnerships should be entitled to certain

rights and benefits that are accorded married couples under the laws of New Jersey, including, ... visitation rights for a hospitalized domestic partner and the right to make medical or legal decisions for an incapacitated partner...” P.L. 2003, c. 246, Section 2 (N.J.S.A. 26:8A-2) (emphasis added).

The Department is inclined to view the more general provision within the legislative findings as lending support to the idea of granting a domestic partner the authority to make medical or legal decisions for an incapacitated partner in the absence of a proxy directive, especially in light of the fact that even prior to the Act, N.J.A.C. 8:43G-4.1 recognizes the authority of the “patient’s next of kin or guardian or [person designated] through an advance directive, to the extent authorized by law” to give informed consent. It would be advisable to consult with your counsel in order to arrive at an interpretation which is consistent with the requirements of N.J.A.C. 8:43G-4.1.

## CONCLUSION

It is essential that hospitals draft well defined and well reasoned policy and procedures regarding domestic partners in both emergency and non-emergency situations. It is also important that such policy and procedures address the full range of rights afforded domestic partners under the Act consistent with the rights and benefits that are accorded married couples under the laws of New Jersey.

See attachments.

**ATTACHMENT A**  
**EXCERPTS FROM P.L. 2003, c. 246 (Domestic Partnership Act)**

C.26:8A-1 Short title.

- 1.<sup>3</sup> This act shall be known and may be cited as the "Domestic Partnership Act."

C.26:8A-2 Findings, declarations relative to domestic partners.

2. The Legislature finds and declares that:

- a. There are a significant number of individuals in this State who choose to live together in important personal, emotional and economic committed relationships with another individual;

- b. These familial relationships, which are known as domestic partnerships, assist the State by their establishment of a private network of support for the financial, physical and emotional health of their participants;

- c. Because of the material and other support that these familial relationships provide to their participants, the Legislature believes that these mutually supportive relationships should be formally recognized by statute, and that certain rights and benefits should be made available to individuals participating in them, including: statutory protection against various forms of discrimination against domestic partners; certain visitation and decision-making rights in a health care setting; and certain tax-related benefits; and, in some cases, health and pension benefits that are provided in the same manner as for spouses;

- d. All persons in domestic partnerships should be entitled to certain rights and benefits that are accorded to married couples under the laws of New Jersey, including: statutory protection through the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) against various forms of discrimination based on domestic partnership status, such as employment, housing and credit discrimination; visitation rights for a hospitalized domestic partner and the right to make medical or legal decisions for an incapacitated partner; and an additional exemption from the personal income tax and the transfer inheritance tax on the same basis as a spouse. The need for all persons who are in domestic partnerships, regardless of their sex, to have access to these rights and benefits is paramount in view of their essential relationship to any reasonable conception of basic human dignity and autonomy, and the extent to which they will play an integral role in enabling these persons to enjoy their familial relationships as domestic partners and to cope with adversity when a medical emergency arises that affects a domestic partnership, as was painfully but graphically illustrated on a large scale in the aftermath of the tragic events that befell the people of our State and region on September 11, 2001;

- e. The Legislature, however, discerns a clear and rational basis for making certain health and pension benefits available to dependent domestic partners only in the case of domestic partnerships in which both persons are of the same sex and are therefore unable to enter into a marriage with each other that is recognized by New Jersey law, unlike persons of the opposite

---

<sup>3</sup> This "1" refers to the section number within the public law (abbreviated "P.L."). The legislature generally designates P.L. section numbers in this manner. P.L. section numbers will appear so throughout this document. This can sometimes be confusing; for example, later in the public law, where C.26:8A-11 is added, you will see a "58." This refers to section 58 of P.L. 2003, c. 246. The "58," however, will not appear in the New Jersey Statutes. Rather, C.26:8A-11 will appear directly after C.26:8A-10, notwithstanding the fact that the two provisions appear within the P.L. at sections 58 and 10, respectively.

sex who are in a domestic partnership but have the right to enter into a marriage that is recognized by State law and thereby have access to these health and pension benefits; and

f. Therefore, it is the public policy of this State to hereby establish and define the rights and responsibilities of domestic partners.

#### C.26:8A-3 Definitions relative to domestic partners.

3. As used in sections 1 through 9 of P.L.2003, c.246 (C.26:8A-1 through C.26:8A-9) and in R.S.26:8-1 et seq.:

"Affidavit of Domestic Partnership" means an affidavit that sets forth each party's name and age, the parties' common mailing address, and a statement that, at the time the affidavit is signed, both parties meet the requirements of this act for entering into a domestic partnership and wish to enter into a domestic partnership with each other.

"Basic living expenses" means the cost of basic food and shelter, and any other cost, including, but not limited to, the cost of health care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner.

"Certificate of Domestic Partnership" means a certificate that includes: the full names of the domestic partners, a statement that the two individuals are members of a registered domestic partnership recognized by the State of New Jersey, the date that the domestic partnership was entered into, and a statement that the partners are entitled to all the rights, privileges and responsibilities accorded to domestic partners under the law. The certificate shall bear the seal of the State of New Jersey.

"Commissioner" means the Commissioner of Health and Senior Services.

"Domestic partner" or "partner" means a person who is in a relationship that satisfies the definition of a domestic partnership as set forth in this act.

"Have a common residence" means that two persons share the same place to live in this State, or share the same place to live in another jurisdiction when at least one of the persons is a member of a State-administered retirement system, regardless of whether or not: the legal right to possess the place is in both of their names; one or both persons have additional places to live; or one person temporarily leaves the shared place of residence to reside elsewhere, on either a short-term or long-term basis, for reasons that include, but are not limited to, medical care, incarceration, education, a sabbatical or employment, but intends to return to the shared place of residence.

"Jointly responsible" means that each domestic partner agrees to provide for the other partner's basic living expenses if the other partner is unable to provide for himself.

"Notice of Rights and Obligations of Domestic Partners" means a form that advises domestic partners, or persons seeking to become domestic partners, of the procedural requirements for establishing, maintaining, and terminating a domestic partnership, and includes information about the rights and responsibilities of the partners.

#### C.26:8A-4 Affidavit of Domestic Partnership; establishment, requirements.

4. a. Two persons who desire to become domestic partners and meet the requirements of subsection b. of this section may execute and file an Affidavit of Domestic Partnership with the local registrar upon payment of a fee, in an amount to be determined by the commissioner, which shall be deposited in the General Fund. Each person shall receive a copy of the affidavit marked "filed."

b. A domestic partnership shall be established when all of the following requirements are met:

(1) Both persons have a common residence and are otherwise jointly responsible for each other's common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property, which shall be demonstrated by at least one of the following:

- (a) a joint deed, mortgage agreement or lease;
- (b) a joint bank account;
- (c) designation of one of the persons as a primary beneficiary in the other person's will;
- (d) designation of one of the persons as a primary beneficiary in the other person's life insurance policy or retirement plan; or
- (e) joint ownership of a motor vehicle;

(2) Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;

(3) Neither person is in a marriage recognized by New Jersey law or a member of another domestic partnership;

(4) Neither person is related to the other by blood or affinity up to and including the fourth degree of consanguinity;

(5) Both persons are of the same sex and therefore unable to enter into a marriage with each other that is recognized by New Jersey law, except that two persons who are each 62 years of age or older and not of the same sex may establish a domestic partnership if they meet the requirements set forth in this section;

(6) Both persons have chosen to share each other's lives in a committed relationship of mutual caring;

(7) Both persons are at least 18 years of age;

(8) Both persons file jointly an Affidavit of Domestic Partnership; and

(9) Neither person has been a partner in a domestic partnership that was terminated less than 180 days prior to the filing of the current Affidavit of Domestic Partnership, except that this prohibition shall not apply if one of the partners died; and, in all cases in which a person registered a prior domestic partnership, the domestic partnership shall have been terminated in accordance with the provisions of section 10 of P.L.2003, c.246 (C.26:8A-10).

c. A person who executes an Affidavit of Domestic Partnership in violation of the provisions of subsection b. of this section shall be liable to a civil penalty in an amount not to exceed \$1,000. The penalty shall be sued for and collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.26:8A-5 Notice of termination of domestic partnerships to third parties; requirements.

5. a. A former domestic partner who has given a copy of the Certificate of Domestic Partnership to any third party to qualify for any benefit or right and whose receipt of that benefit or enjoyment of that right has not otherwise terminated, shall, upon termination of the domestic partnership, give or send to the third party, at the last known address of the third party, written notification that the domestic partnership has been terminated. A third party that suffers a loss as a result of failure by a domestic partner to provide this notice shall be entitled to seek recovery from the partner who was obligated to send the notice for any actual loss resulting thereby.

b. Failure to provide notice to a third party, as required pursuant to this section, shall not delay or prevent the termination of the domestic partnership.

C.26:8A-6 Obligations of domestic partners.

6. a. The obligations that two people have to each other as a result of creating a domestic partnership shall be limited to the provisions of this act, and those provisions shall not diminish any right granted under any other provision of law.

b. Upon the termination of a domestic partnership, the domestic partners, from that time forward, shall incur none of the obligations to each other as domestic partners that are created by this or any other act.

c. A domestic partnership, civil union or reciprocal beneficiary relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the partnership was created, shall be valid in this State.

d. Any health care or social services provider, employer, operator of a place of public accommodation, property owner or administrator, or other individual or entity may treat a person as a member of a domestic partnership, notwithstanding the absence of an Affidavit of Domestic Partnership filed pursuant to this act.

e. Domestic partners may modify the rights and obligations to each other that are granted by this act in any valid contract between themselves, except for the requirements for a domestic partnership as set forth in section 4 of P.L.2003, c.246 (C.26:8A-4).

f. Two adults who have not filed an Affidavit of Domestic Partnership shall be treated as domestic partners in an emergency medical situation for the purposes of allowing one adult to accompany the other adult who is ill or injured while the latter is being transported to a hospital, or to visit the other adult who is a hospital patient, on the same basis as a member of the latter's immediate family, if both persons, or one of the persons in the event that the other person is legally or medically incapacitated, advise the emergency care provider that the two persons have met the other requirements for establishing a domestic partnership as set forth in section 4 of P.L.2003, c.246 (C.26:8A-4); however, the provisions of this section shall not be construed to permit the two adults to be treated as domestic partners for any other purpose as provided in P.L.2003, c.246 (C.26:8A-1 et al.) prior to their having filed an Affidavit of Domestic Partnership.

g. A domestic partner shall not be liable for the debts of the other partner contracted before establishment of the domestic partnership, or contracted by the other partner in his own name during the domestic partnership. The partner who contracts for the debt in his own name shall be liable to be sued separately in his own name, and any property belonging to that partner shall be liable to satisfy that debt in the same manner as if the partner had not entered into a domestic partnership.

C.26:8A-7 Preparation of forms and notices.

7. a. The commissioner shall cause to be prepared, in such a manner as the commissioner determines appropriate:

(1) blank forms, in quadruplicate, of Affidavits of Domestic Partnership and Certificates of Domestic Partnership corresponding to the requirements of this act; and

(2) copies of the Notice of the Rights and Obligations of Domestic Partners.

b. The commissioner shall ensure that these forms and notices, along with such sections of the laws concerning domestic partnership and explanations thereof as the commissioner may deem useful to persons having duties to recognize domestic partners under those laws, are printed and supplied to each local registrar, and made available to the public upon request.

C.26:8A-8 Duties of local registrar.

8. a. The local registrar shall:

(1) stamp each completed Affidavit of Domestic Partnership received with the date of its receipt and the name of the registration district in which it is filed; and

(2) immediately provide two copies of the stamped Affidavit of Domestic Partnership to the person who files that document.

b. Upon the filing of an Affidavit of Domestic Partnership and payment of the appropriate filing fee, the local registrar shall immediately complete a Certificate of Domestic Partnership with the domestic partners' relevant information and the date that the domestic partnership was established. The local registrar shall then issue to the domestic partners two copies of the certificate and two copies of the Notice of the Rights and Obligations of Domestic Partners. Copies of the Certificate of Domestic Partnership shall be prepared and recorded in the local registrar's records and with the State registrar.

c. Each local registrar shall, on or before the 10th day of each calendar month, or sooner if requested by the Department of Health and Senior Services, transmit to the State registrar the original of all the Affidavits of Domestic Partnership and Certificates of Domestic Partnership received or prepared by the local registrar for the preceding month.

C.26:8A-9 Duties of State registrar.

9. The State registrar shall cause all Affidavits of Domestic Partnership and Certificates of Domestic Partnership received to be alphabetically indexed by the surname of one of the partners, and shall establish a cross-referencing system to allow the records to be identified by the surname of the second partner. The State registrar shall also cause to be transcribed or otherwise recorded from the certificates any of the vital facts appearing thereon as the commissioner may deem necessary or useful.

C.26:8A-10 Jurisdiction of Superior Court relative to termination of domestic partnerships.

10. a. (1) The Superior Court shall have jurisdiction over all proceedings relating to the termination of a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4), including the division and distribution of jointly held property. The fees for filing an action or proceeding for the termination of a domestic partnership shall be the same as those for filing an action or proceeding for divorce pursuant to N.J.S.22A:2-12.

(2) The termination of a domestic partnership may be adjudged for the following causes:

(a) voluntary sexual intercourse between a person who is in a domestic partnership and an individual other than the person's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3);

(b) willful and continued desertion for a period of 12 or more consecutive months, which may be established by satisfactory proof that the parties have ceased to cohabit as domestic partners;

(c) extreme cruelty, which is defined as including any physical or mental cruelty that endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; except that no complaint for termination shall be filed until after three months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;

(d) separation, provided that the domestic partners have lived separate and apart in different habitations for a period of at least 18 or more consecutive months and there is no reasonable



prospect of reconciliation; and provided further that, after the 18-month period, there shall be a presumption that there is no reasonable prospect of reconciliation;

(e) voluntarily induced addiction or habituation to any narcotic drug, as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C.24:21-2) or the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al., or habitual drunkenness for a period of 12 or more consecutive months subsequent to establishment of the domestic partnership and next preceding the filing of the complaint;

(f) institutionalization for mental illness for a period of 24 or more consecutive months subsequent to establishment of the domestic partnership and next preceding the filing of the complaint; or

(g) imprisonment of the defendant for 18 or more consecutive months after establishment of the domestic partnership, provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation following the imprisonment.

(3) In all such proceedings, the court shall in no event be required to effect an equitable distribution of property, either real or personal, which was legally and beneficially acquired by both domestic partners or either domestic partner during the domestic partnership.

(4) The court shall notify the State registrar of the termination of a domestic partnership pursuant to this subsection.

b. In the case of two persons who are each 62 years of age or older and not of the same sex and have established a domestic partnership pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4), the domestic partnership shall be deemed terminated if the two persons enter into a marriage with each other that is recognized by New Jersey law .

c. The State registrar shall revise the records of domestic partnership provided for in section 9 of P.L.2003, c.246 (C.26:8A-9) to reflect the termination of a domestic partnership pursuant to this section.

#### C.26:2H-12.22 Domestic partner permitted visitation in health care facility.

13. a. A health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall allow a patient's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), the children of the patient's domestic partner, and the domestic partner of the patient's parent or child to visit, unless one of the following conditions is met:

(1) No visitors are allowed;

(2) The health care facility reasonably determines that the presence of a particular visitor would endanger the health or safety of a patient, a member of the staff of the facility, or another visitor to the facility, or would significantly disrupt the operations of the facility; or

(3) The patient has indicated to health care facility staff that the patient does not want the person to visit.

b. The provisions of subsection a. of this section shall not be construed as prohibiting a health care facility from otherwise establishing reasonable restrictions upon visitations, including restrictions upon the hours of visitation and number of visitors.

27. Section 1 of P.L.1977, c.237 (C.26:2H-32) is amended to read as follows:

#### C.26:2H-32 Definitions.

1. The following words or phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

a. "Nursing home" means a facility providing therein nursing care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board or health-related service, or any combination of the foregoing and in addition thereto, providing nursing care and health-related service, or either of them, to persons who are not occupants of the facility.

b. "Affiliate" means (1) with respect to a partnership, each partner thereof; (2) with respect to a corporation, each officer, director, principal stockholder or controlling person thereof; (3) with respect to a natural person (a) each member of said person's immediate family, (b) each partnership and each partner thereof of which said person or any affiliate of said person is a partner, and (c) each corporation in which said person or any affiliate of said person is an officer, director, principal stockholder or controlling person.

c. "Controlling person" of any corporation, partnership or other entity means any person who has the ability, directly or indirectly, to direct or cause the direction of the management or policies of said corporation, partnership or other entity.

d. "Immediate family" of any person includes each parent, child, spouse, brother, sister, first cousin, aunt and uncle of such person, whether such relationship arises by birth, marriage or adoption, as well as the domestic partner of that person as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) and the domestic partner's parent and adult child.

e. "Principal stockholder" of a corporation means any person who beneficially owns, holds or has the power to vote, 10% or more of any class of securities issued by said corporation.

28. Section 5 of P.L.1991, c.201 (C.26:2H-57) is amended to read as follows:

C.26:2H-57 Proxy, instruction directive; reaffirmed, modified, revoked.

5. a. A declarant may reaffirm or modify either a proxy directive, or an instruction directive, or both. The reaffirmation or modification shall be made in accordance with the requirements for execution of an advance directive pursuant to section 4 of this act.

b. A declarant may revoke an advance directive, including a proxy directive, or an instruction directive, or both, by the following means:

(1) Notification, orally or in writing, to the health care representative, physician, nurse or other health care professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or

(2) Execution of a subsequent proxy directive or instruction directive, or both, in accordance with section 4 of this act.

c. Designation of the declarant's spouse as health care representative shall be revoked upon divorce or legal separation, and designation of the declarant's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) as health care representative shall be revoked upon termination of the declarant's domestic partnership, unless otherwise specified in the advance directive.

d. An incompetent patient may suspend an advance directive, including a proxy directive, an instruction directive, or both, by any of the means stated in paragraph (1) of subsection b. of this section. An incompetent patient who has suspended an advance directive may reinstate that advance directive by oral or written notification to the health care representative, physician, nurse or other health care professional of an intent to reinstate the advance directive.

e. Reaffirmation, modification, revocation or suspension of an advance directive is effective upon communication to any person capable of transmitting the information including the health care representative, the attending physician, nurse or other health care professional responsible for the patient's care.

29. Section 6 of P.L.1991, c.201 (C.26:2H-58) is amended to read as follows:

C.26:2H-58 Designation of health care representative; limitations.

6. a. A declarant may execute a proxy directive, pursuant to the requirements of section 4 of this act, designating a competent adult to act as his health care representative.

(1) A competent adult, including, but not limited to, a declarant's spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), adult child, parent or other family member, friend, religious or spiritual advisor, or other person of the declarant's choosing, may be designated as a health care representative.

(2) An operator, administrator or employee of a health care institution in which the declarant is a patient or resident shall not serve as the declarant's health care representative unless the operator, administrator or employee is related to the declarant by blood, marriage, domestic partnership or adoption.

This restriction does not apply to a physician, if the physician does not serve as the patient's attending physician and the patient's health care representative at the same time.

(3) A declarant may designate one or more alternate health care representatives, listed in order of priority. In the event the primary designee is unavailable, unable or unwilling to serve as health care representative, or is disqualified from such service pursuant to this section or any other law, the next designated alternate shall serve as health care representative. In the event the primary designee subsequently becomes available and able to serve as health care representative, the primary designee may, insofar as then practicable, serve as health care representative.

(4) A declarant may direct the health care representative to consult with specified individuals, including alternate designees, family members and friends, in the course of the decision making process.

(5) A declarant shall state the limitations, if any, to be placed upon the authority of the health care representative including the limitations, if any, which may be applicable if the declarant is pregnant.

b. A declarant may execute an instruction directive, pursuant to the requirements of section 4 of this act, stating the declarant's general treatment philosophy and objectives; or the declarant's specific wishes regarding the provision, withholding or withdrawal of any form of health care, including life-sustaining treatment; or both. An instruction directive may, but need not, be executed contemporaneously with, or be attached to, a proxy directive.

30. Section 8 of P.L.1989, c.303 (C.26:5C-12) is amended to read as follows:

C.26:5C-12 Consent to disclose record of deceased, incompetent person.

8. When consent is required for disclosure of the record of a deceased or legally incompetent person who has or is suspected of having AIDS or HIV infection, consent may be obtained:

a. From an executor, administrator of the estate, or authorized representative of the legally incompetent or deceased person;

b. From the person's spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), primary caretaking partner or, if none, by another member of the person's family; and

c. From the commissioner in the event that a deceased person has neither an authorized representative or next-of-kin.

31. Section 1 of P.L.1954, c.113 (C.26:6-50) is amended to read as follows:

C.26:6-50 Persons who may consent to examination.

1. Any physician licensed to practice medicine and surgery in this State may conduct a post-mortem and necroscopic examination upon the body of a deceased person if he first obtains the consent in writing of any of the following persons who shall have assumed responsibility and custody of the body for purposes of the burial: surviving spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), adult child, parent, or other next of kin, of the deceased person. In the absence of any of the foregoing named persons any other person charged by law with and who shall have assumed responsibility and custody of the body for the burial may give such consent. Where 2 or more of the abovementioned have assumed such responsibility and custody of the body for purposes of burial, the consent of 1 of such persons shall be sufficient.

32. Section 1 of P.L.1969, c.161 (C.26:6-57) is amended to read as follows:

C.26:6-57 Definitions relative to human body part donations.

1. As used in this act:

(a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any State for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited, or approved under the laws of any State; includes a hospital operated by the United States Government, a State, or a subdivision thereof, although not required to be licensed under State laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any State.

(h) "State" includes any State, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

(i) "Transplant recovery specialist" means a medical professional licensed by this or another State or technician trained by an organ procurement organization in accordance with federal standards pursuant to 42 U.S.C.274(b) and nationally accredited standards for human body part removal.

(j) "Organ procurement organization" means an organization which is qualified by the Secretary of Health and Human Services pursuant to 42 U.S.C.273(b).

(k) "Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

33. Section 2 of P.L.1969, c.161 (C.26:6-58) is amended to read as follows:

C.26:6-58 Gift of all or part of body; consent; examination; rights of donee.

2. (a) Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 3, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 3:

- (1) The spouse or domestic partner,
- (2) An adult son or daughter,
- (3) Either parent,
- (4) An adult brother or sister,
- (5) A guardian of the person of the decedent at the time of his death,
- (6) Any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 7(d).

34. Section 1 of P.L.1987, c.244 (C.26:6-58.1) is amended to read as follows:

C.26:6-58.1 Consent for organ donations.

1. a. At or around the time of death of a patient in a hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), the hospital shall notify its designated organ procurement organization of the patient's death. If the patient has a validly executed donor card, donor designation on a driver's license, advance directive pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.), will, other document of gift, or registration with a Statewide organ and tissue donor registry, the organ procurement organization representative or the hospital's designated requestor shall attempt to notify a person listed in this subsection of the gift. If no document of gift is known to the organ procurement organization representative or the designated requestor, one of those two individuals shall ask the persons listed in this subsection whether the decedent had a validly executed document of gift. If there is no evidence of an anatomical gift or actual notice of contrary indications by the decedent, the organ procurement organization representative or the designated requestor shall attempt to notify a person listed in this subsection of the option to donate organs or tissues. Consent need only be obtained from an available person in the highest priority class applicable, but an anatomical gift shall be barred by actual notice of opposition by a member of the same or a prior class. If no available member of a class will make a decision, the

organ procurement organization representative or the designated requestor shall approach a member of the next class.

The classes in order of priority are:

- (1) the spouse or domestic partner,
- (2) an adult son or daughter,
- (3) either parent,
- (4) an adult brother or sister,
- (5) a guardian of the person of the decedent at the time of the decedent's death, or
- (6) any other person authorized or under the obligation to dispose of the body.

For the purposes of this section, a person is available if that person can be approached within a time period compatible with effecting an anatomical gift.

b. The person in charge of the hospital or that person's designated representative shall indicate in the medical record of the decedent whether or not consent was granted, the name of the person granting or refusing the consent, and that person's relationship to the decedent.

c. A gift made pursuant to the request required by this act shall be executed pursuant to the applicable provisions of P.L.1969, c.161 (C.26:6-57 et seq.).

d. A person who acts in good faith in accordance with the provisions of this act is not liable for any damages in any civil action or subject to prosecution in any criminal proceeding for any act or omission of the person.

e. If the decedent is deemed an unsuitable candidate for donation, an explanatory notation shall be made part of the medical record of the decedent.

35. Section 7 of P.L.1969, c.161 (C.26:6-63) is amended to read as follows:

C.26:6-63 Acceptance, rejection of gift, determination of time of death; civil liability; application of autopsy laws.

7. (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services, and after it has served its scientific purposes, provide for its disposal by burial or cremation. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse or domestic partner, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this act or the anatomical gift laws of another State or foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this act are subject to the laws of this State prescribing powers and duties with respect to autopsies.

C.26:8A-11 Applicability of act.

58. a. The provisions of sections 41 through 56, inclusive, of P.L.2003, c. 246 shall only apply in the case of two persons who are of the same sex and have established a domestic partnership pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

b. Notwithstanding any other provisions of law to the contrary, the provisions of subsection a. of this section shall not be deemed to be an unlawful discrimination under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

C.26:8A-12 Rules, regulations; responsible agencies.

59. a. The Commissioner of Health and Senior Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 1 through 10 and 13 through 35 of this act.

b. The Commissioner of Banking and Insurance, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 47 through 52, 55 and 56 of this act.

c. The New Jersey Individual Health Coverage Program Board, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of section 53 of this act.

d. The New Jersey Small Employer Health Benefits Program Board, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of section 54 of this act.